

SB0066



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB0066

Introduced 1/15/2015, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

New Act

Creates the Smart Phone Theft Protection Act. Requires wireless communications device dealers to maintain a written record of every purchase or acquisition of a used wireless communications device for resale. Sets forth information that must be included in the written record. Provides that a law enforcement agency that has probable cause to believe a device has been stolen or is evidence of a crime may place an investigative hold on or confiscate the device. Requires the installation of video security cameras at a dealer's physical location. Provides that a violation of the Act is a Class B misdemeanor. Provides exemption from the application of the Act, including dealers who acquire devices for trade-in, or repair and refurbishment programs.

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CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Smart
5 Phone Theft Protection Act.

6 Section 5. Definitions. As used in this Act:

7 "Internet marketplace" or "online platform" means a
8 digitally accessible platform that facilitates commercial
9 transactions between buyers and community-rated sellers where
10 the operator or the platform does not take possession of, or
11 title to, the goods bought or sold.

12 "Law enforcement agency" means a duly authorized local,
13 county, State, or federal law enforcement agency.

14 "Repair and refurbishment program" means a program,
15 offered by a wireless telephone service provider,
16 manufacturer, or retailer who is not primarily engaged in
17 purchasing personal property of any type from a person who is
18 not a wholesaler, through which used or previously owned
19 wireless communications devices are restored to good working
20 order.

21 "Trade-in program" means a program offered by a wireless
22 telephone service provider, manufacturer, or retailer who is
23 not primarily engaged in purchasing personal property of any

1 type from a person who is not a wholesaler, pursuant to which
2 used wireless communications devices are accepted from
3 customers in exchange for either a noncash credit usable only
4 for the purchase of goods or services from the wireless
5 telephone service provider, manufacturer, or retailer or a
6 rebate from a manufacturer on the purchase of one of the
7 manufacturer's wireless communications devices.

8 "Wireless communications device" means a cellular phone or
9 a portable electronic device that is capable of receiving and
10 transmitting data, including, but not limited to, text messages
11 and e-mail, without an access line for service.

12 "Wireless communications device dealer" or "dealer" means
13 an individual, partnership, limited partnership, limited
14 liability company, corporation, or other entity engaged in the
15 business of buying or selling used wireless communications
16 devices.

17 "Wireless communications device manufacturer" or
18 "manufacturer" means an individual, partnership, limited
19 partnership, limited liability company, corporation, or other
20 entity engaged in the business of manufacturing wireless
21 communications devices.

22 "Wireless telephone service provider" means a provider of
23 wireless telephone services and its authorized dealers,
24 distributors, and agents.

25 Section 10. Wireless communications devices; acquisition

1 for resale; purchase or acquisition record required.

2 (a) Every wireless communications device dealer, including
3 an agent, employee, or representative of the dealer, but not an
4 internet marketplace, shall keep a written record at the time
5 of each purchase or acquisition of a used wireless
6 communications device for resale. The record must include the
7 following and may be kept in electronic form:

8 (1) an accurate account or description of the wireless
9 communications device purchased or acquired;

10 (2) the date, time, and place or the online platform
11 the wireless communications device was purchased or
12 acquired;

13 (3) the name and address of the person selling or
14 delivering the wireless communications device;

15 (4) the number of the check or electronic transfer used
16 to purchase the wireless communications device;

17 (5) the number from an identification document issued
18 by any state, federal, or foreign government if the
19 document includes the person's photograph, full name,
20 birth date, and signature; and

21 (6) a statement signed by the seller, under penalty of
22 perjury, attesting that the wireless communications device
23 is not stolen and is free of any liens or encumbrances and
24 the seller has the right to sell it.

25 (b) Records required to be maintained under this Section
26 shall be retained by the wireless communications device dealer

1 for a period of 3 years.

2 (c) The record, as well as the wireless communications
3 device purchased or received, shall at all reasonable times be
4 available for inspection by any law enforcement agency.

5 (d) No record is required for wireless communications
6 devices purchased from merchants, manufacturers, or wholesale
7 dealers having an established place of business, but a bill of
8 sale or other evidence of open or legitimate purchase of the
9 wireless communications device shall be obtained and kept by
10 the wireless communications device dealer, which must be shown
11 upon demand to any law enforcement agency.

12 (e) Except as otherwise provided in this Section, a
13 wireless communications device dealer or the dealer's agent,
14 employee, or representative may not disclose personal
15 information received pursuant to subsection (a) concerning a
16 customer without the customer's consent unless the disclosure
17 is made in response to a request from a law enforcement agency.
18 A wireless communications device dealer must implement
19 reasonable safeguards to protect the security of the personal
20 information and prevent unauthorized access to or disclosure of
21 the information. For purposes of this Section, "personal
22 information" is any individually identifiable information
23 gathered in connection with a record under subsection (a).

24 Section 15. Records; prohibitions. A wireless
25 communications device dealer, including an agent, employee, or

1 representative of the dealer, shall not:

2 (1) make any false entry in the records of transactions
3 involving a used wireless communications device;

4 (2) falsify, obliterate, destroy, or remove from the
5 place of business the records, books, or accounts relating
6 to used wireless communications device transactions;

7 (3) refuse to allow the appropriate law enforcement
8 agency to inspect records or any used wireless
9 communications device in the dealer's possession during
10 the ordinary hours of business or other times acceptable to
11 both parties;

12 (4) fail to maintain a record of each used wireless
13 communications device transaction for 3 years; or

14 (5) purchase a used wireless communications device
15 from a person under the age of 18 years.

16 Section 20. Payment for used wireless communications
17 devices. A wireless communications device dealer shall pay for
18 purchases of all used wireless communications devices by check
19 mailed to a specific address or by electronic transfer.

20 Section 25. Investigative holds; confiscation of property.

21 (a) Whenever a law enforcement official from any agency has
22 probable cause to believe that a wireless communications device
23 in the possession of a wireless communications device dealer is
24 stolen or is evidence of a crime and notifies the dealer not to

1 sell the item, the dealer shall not process or sell the item or
2 remove or allow its removal from the premises. This
3 investigative hold must be confirmed in writing by the
4 originating agency within 72 hours and remain in effect for 30
5 days from the date of initial notification, until the
6 investigative hold is canceled or renewed, or until a law
7 enforcement notification to confiscate or directive to release
8 is issued, whichever comes first.

9 (b) If a wireless communications device is identified as
10 stolen or as evidence in a criminal case, a law enforcement
11 official may:

12 (1) physically confiscate and remove the wireless
13 communications device from the wireless communications
14 device dealer pursuant to a written notification;

15 (2) place the wireless communications device on hold or
16 extend the hold under subsection (a) and leave the device
17 at the premises; or

18 (3) direct its release to a registered owner or owner's
19 agent.

20 (c) When an item is confiscated, the law enforcement agency
21 doing so shall provide identification upon request of the
22 wireless communications device dealer, and shall provide the
23 name and telephone number of the confiscating agency and
24 investigator and the case number related to the confiscation.

25 (d) When an investigative hold or notification to
26 confiscate is no longer necessary, the law enforcement official

1 or designee shall notify the wireless communications device
2 dealer.

3 (e) A wireless communications device dealer may sell or
4 otherwise dispose of the wireless communications device if: (1)
5 a notification to confiscate is not issued during the
6 investigative hold; or (2) a law enforcement official does not
7 physically remove the wireless communications device from the
8 premises within 15 calendar days from issuance of a
9 notification to confiscate.

10 (f) If a wireless communications device dealer is required
11 to hold the wireless communications device at the direction of
12 law enforcement for purposes of investigation or prosecution,
13 or if the device is seized by law enforcement, the wireless
14 communications device dealer and any other victim is entitled
15 to seek restitution, including any out-of-pocket expenses for
16 storage and lost profit, in any criminal case that may arise
17 from the investigation against the individual who sold the
18 wireless communications device to the wireless communications
19 device dealer.

20 Section 30. Video security cameras required.

21 (a) Each wireless communications device dealer shall
22 install and maintain at each physical location video
23 surveillance cameras, still digital cameras, or similar
24 devices positioned to record or photograph a frontal view
25 showing a readily identifiable image of the face of each seller

1 of a wireless communications device who enters the physical
2 location.

3 (b) The video camera or still digital camera must be kept
4 in operating condition and must be shown upon request to a
5 properly identified law enforcement officer for inspection.
6 The camera must record and display the accurate date and time.
7 The video camera or still digital camera must be turned on at
8 all times when the physical location is open for business and
9 at any other time when wireless communications devices are
10 purchased or sold.

11 (c) Recordings and images required by subsection (a) shall
12 be retained by the wireless communications device dealer for a
13 minimum period of 30 days and shall at all reasonable times be
14 open to the inspection of any properly identified law
15 enforcement officer.

16 Section 35. Criminal penalty. A wireless communications
17 device dealer, or the agent, employee, or representative of the
18 wireless communications device dealer, who intentionally
19 violates a provision of this Act is guilty of a Class B
20 misdemeanor.

21 Section 40. Application of Act.

22 (a) This Act does not apply with respect to a wireless
23 communications device returned to the store where it was
24 originally purchased pursuant to the return policies of the

1 wireless communications device dealer, wireless telephone
2 service provider, manufacturer, or retailer.

3 (b) This Act does not apply with respect to wireless
4 communications devices acquired by a:

5 (1) wireless telephone provider as part of a trade-in
6 or a repair and refurbishment program; or

7 (2) manufacturer as part of a trade-in program.

8 (c) This Act does not apply to wireless communications
9 device dealers regulated under the Pawnbroker Regulation Act.